

90-438

No. _____

Supreme Court, U.S.

FILED

AUG 12 1990

JOSEPH F. SPANOL, JR.
CLERK

IN THE
" SUPREME COURT OF THE UNITED STATES

Term, 1990

CHARLES STEWART,

Petitioner,

vs.

DOROTHY MORRIS and
FLOYD ENFINGER, JR.

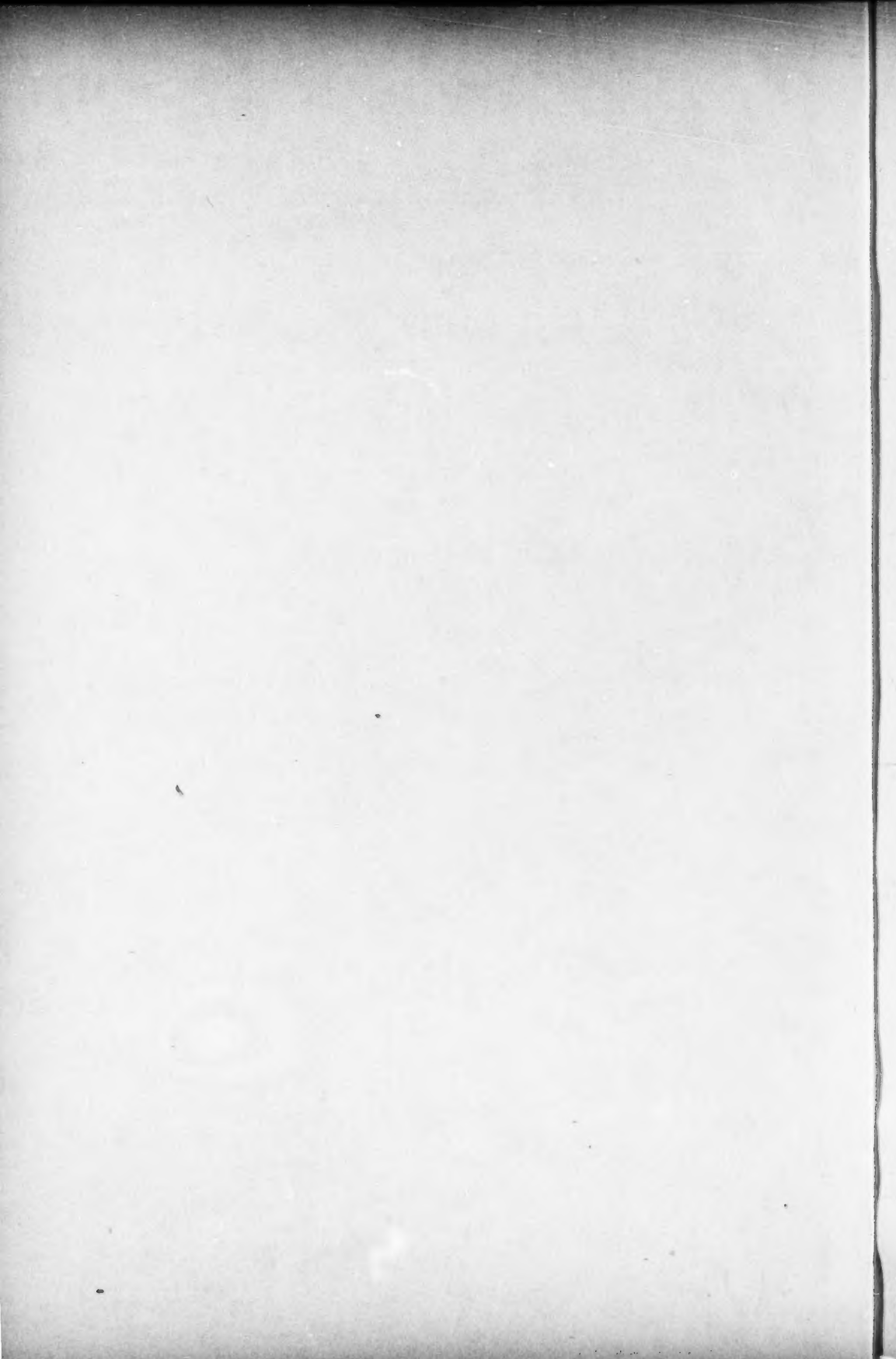
Respondents.

PETITION FOR WRIT OF CERTIORARIS
TO THE UNITED STATES COURT OF
APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Henry E. Lagman
Attorney for Petitioner
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Birmingham, Alabama 35242
Telephone: (205) 995-0220

BEST AVAILABLE COPY



QUESTIONS PRESENTED

A. Do attorney's fees, incurred by a person defending himself in an action where the proceedings had been corrupted, constitute damages under RICO?

B. Are incidental damages compensable under RICO?

C. Can a plaintiff recover damages under RICO for incidental damages which he suffered as a direct proximate cause of the racketeering activity?

PARTIES INVOLVED

1. Charles Stewart is the Petitioner in this action.

2. Dorothy Morris is a Respondent in this action.

3. Floyd Enfinger, Jr., is a Respondent in this action and is a former Circuit Court judge for Baldwin County, Alabama.

ARTICLE 1

The United States of America
do hereby certify that
the following is a true and correct
copy of the original
as the same appears in the
records of the
Department of the Interior
at Washington, D. C.

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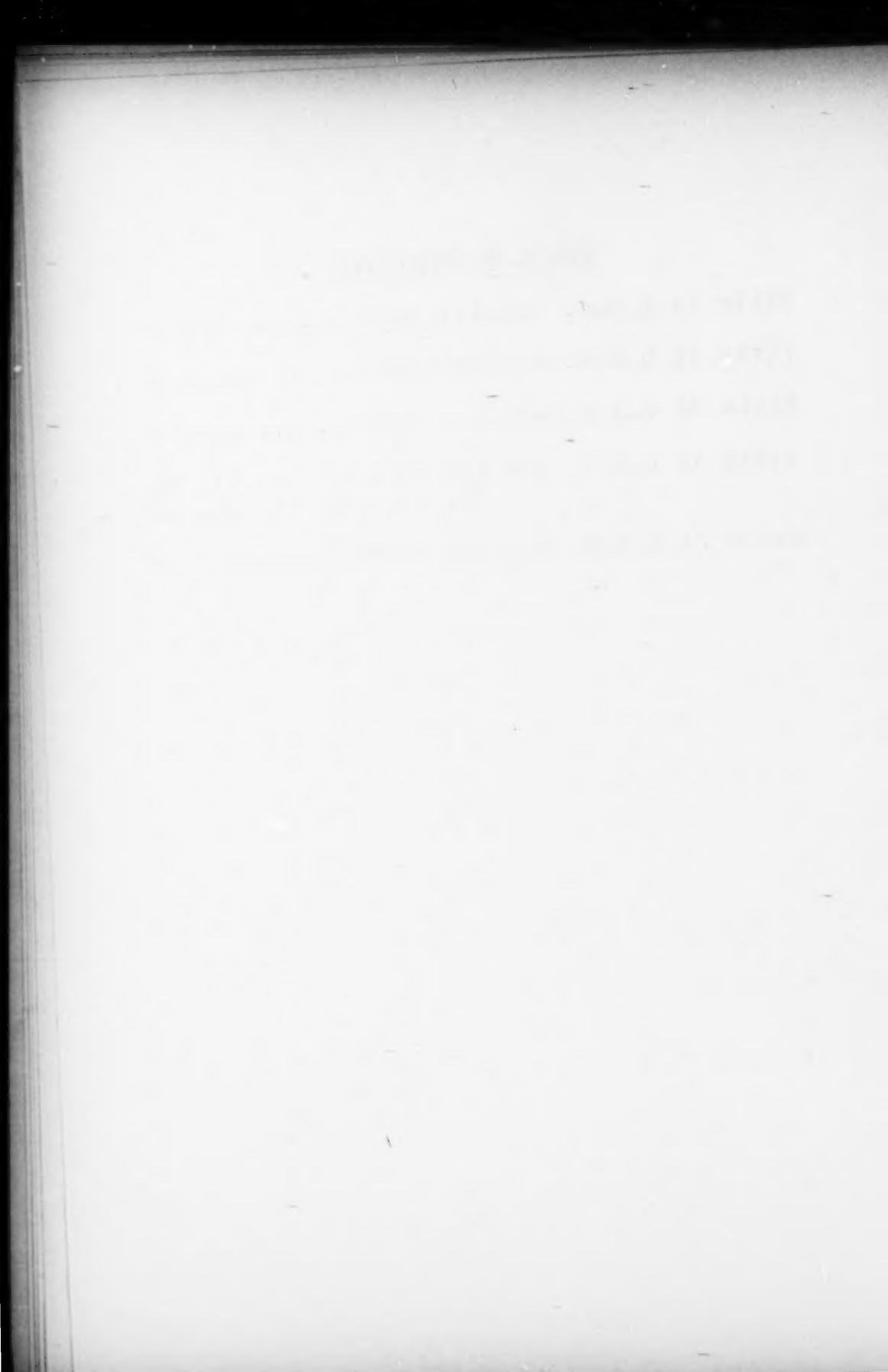
Sedima, S.P.R.I. v. Imrex Co., Inc.,
473 U.S. 479, 105 S.Ct. 3285,
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PETITION FOR WRIT OF CERTIORARIS
TO THE UNITED STATES COURT OF
APPEALS FOR THE ELEVENTH CIRCUIT

Petitioner Charles Stewart respectfully prays that a Writ of Certiorari be issued to review the judgment of the United States Court of Appeals for the Eleventh Circuit entered in this matter on May 29, 1990.

SECTION THE WAY OF CIVILIZATION

IN THE UNITED STATES COURT OF

APPEALS FOR THE SEVENTH CIRCUIT

IN RE THE ESTATE OF JAMES H. HARRIS
DECEASED
PLAINTIFFS
VERSUS
THE UNITED STATES OF AMERICA
DEFENDANT

COMES NOW the Plaintiff James H. Harris, by and through the undersigned counsel, and moves the Court for an order directing the Defendant to pay to the Plaintiff the sum of \$100,000.00, with interest thereon at the rate of six per cent per annum, from the date of the death of James H. Harris, to the date of payment.

And the Plaintiff moves the Court for an order directing the Defendant to pay to the Plaintiff the sum of \$100,000.00, with interest thereon at the rate of six per cent per annum, from the date of the death of James H. Harris, to the date of payment.

And the Plaintiff moves the Court for an order directing the Defendant to pay to the Plaintiff the sum of \$100,000.00, with interest thereon at the rate of six per cent per annum, from the date of the death of James H. Harris, to the date of payment.

And the Plaintiff moves the Court for an order directing the Defendant to pay to the Plaintiff the sum of \$100,000.00, with interest thereon at the rate of six per cent per annum, from the date of the death of James H. Harris, to the date of payment.

And the Plaintiff moves the Court for an order directing the Defendant to pay to the Plaintiff the sum of \$100,000.00, with interest thereon at the rate of six per cent per annum, from the date of the death of James H. Harris, to the date of payment.

I.

OPINIONS BELOW

The Judgments of the United States District Court for the Southern District of Alabama, Southern Division, entered in 86-0607-AH are unreported. The Judgment of the United States District Court for the Southern District of Alabama, Southern Division, entered for Defendant Floyd Enfinger is reflected in Appendix A, and the judgment for Defendant Morris is reflected in Appendix B. The order of the United States Court for the Southern District of Alabama, Southern Division, entered in 86-0607-AH certifying the two judgments, Appendix A and Appendix B as final orders is reflected in Appendix C. The order of the Eleventh Circuit Court of Appeals affirming the District Court's decision is reflected in Appendix D.

II.

JURISDICTION

The judgment of the Eleventh Circuit Court of Appeals was entered on May 29, 1990, and this petition was filed within 90 days of that date. The statutory provision which confers jurisdiction on this Court to review the judgment of the Court of Appeals by Writ of Certiorari is 28 U.S.C. 1254(1).

III.

STATUTORY PROVISIONS INVOLVED

Title 18 U.S.C. Sections 1961, 1962, 1964 are attached as Appendix E and Title 18 U.S.C. Section 1964(c) reads as follows:

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter [18 USCS 1962] may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

STATUTORY PROVISIONS INVOLVED

Title 18, U.S.C., Sections 1481, 1482, 1483
 are amended to read as follows:
 U.S.C., Section 1481(a) reads as follows:

(a) The person named in the indictment as
 defendant in the indictment as a witness of
 the crime shall be held in custody until
 the person named in the indictment as the
 witness of the crime is released and shall
 remain in custody until the person is released
 and the person named in the indictment as the
 witness of the crime is released.

IV.

STATEMENT OF FACTS

In 1985, in the Circuit Court of Baldwin County, Alabama, a divorce action was instituted by Respondent Morris against Petitioner Stewart. Subsequently, another action was filed by Morris against Stewart with Respondent Morris seeking one hundred thousand dollars in damages for an alleged assault perpetrated by Stewart. Thereafter, there were three separate Rule Nisi actions filed by Morris against Stewart. The divorce action between Morris and Stewart came before Respondent Enfinger as a Circuit Court judge. Enfinger heard the pretrial motions and conducted the trial in the aforementioned action and rendered a decision in favor of Morris. After the conclusion of the divorce action, Enfinger had at least some

involvement with the pending civil action and the Rule Nisi actions. The parties are in a disagreement as to exactly what involvement Enfinger had with these still pending actions before the Circuit Court of Baldwin County.

In the Spring of 1986, Morris made a complaint to the Judiciary Inquiry Commission for the State of Alabama, (Hereinafter referred to as the JIC) asserting that Enfinger had used his position as a Circuit Court judge to coerce her to have sex with him. During sworn testimony given before the JIC, Morris asserted that her and Enfinger had entered into an agreement where she would provide sex in return for favorable treatment before the Circuit Court. Morris' testimony encompassed two separate occasions on which Judge Enfinger and she

met at her home, engaged in sexual activity, and discussed the pending civil actions. There was also testimony by Morris to the effect that there were a number of telephone conversations between Judge Enfinger and her and during which they discussed the amount of money that she may receive because of the pending civil actions, how to proceed with these actions, and what attorney or attorneys she should use and discuss her legal matters with. Morris now refutes those statements and now states that the only reason that she engaged with in sex with Enfinger was to have her actions set for trial. Respondent Enfinger denies that he ever engaged in sexual intercourse with Morris or ever entered into any agreement whatsoever. Enfinger does admit that he did on one occasion go to Morris' home, while the aforementioned civil action was

pending.

Stewart filed a complaint with the United States District Court for the Southern District of Alabama, Southern Division asserting a RICO claim against then Judge Enfinger and Morris. Stewart alleged that Enfinger and Morris had engaged in racketeering activity as defined within Title 18 Section 1964, specifically, that Morris bribed Enfinger with sexual favors to get Enfinger to predecide actions that were pending before the Circuit Court of Baldwin County, and/or to use his influence to cause actions which were pending before the Circuit Court of Baldwin County to be decided in Morris' favor. Stewart alleged that defendants had affected interstate commerce by asserting that the office of the Circuit Court judgeship of Baldwin

County affected interstate commerce. Stewart asserted that the conduct had been effected through an enterprise, the office of the Circuit Court judgeship of Baldwin County. Finally, Stewart asserted that he was damaged in the amount of \$6,500.00 because of the bribery and conspiracy. The \$6,500.00 constituting attorney's fees that Stewart incurred in defending, uncovering, and exposing the corruption of Judge Enfinger's office. Eventually, Judge Enfinger and all other judges in Baldwin County recused themselves. A specially appointed judge heard and disposed of the civil action and the Rule Nisi actions in Stewart's favor.

V.

REASONS FOR GRANTING WRIT

The District Court granted Morris and Enfinger's motions for summary judgment, finding that the Plaintiff lacked standing under RICO. The District Court specifically stated that the type of damages which the Plaintiff had asserted were incidental and therefore were not compensable under RICO. The District Court did not dispute that the damages as asserted by Stewart flowed from the predicate acts of racketeering.

The District Court's decision was based upon the presumption that Petitioner's damages in the form of money paid as attorney's fees were incidental and not proprietary. The District Court further based its judgment upon the

assumption that incidental damages are not comprehensible under RICO. It is the Petitioner's position that the District Court erred and decided a federal question in a way that is in conflict with an applicable decision of this Court, specifically, Sedima, S.P.R.I. v. Imrex Co., Inc., 473 U.S. 479, 105 S.Ct. 3285, 3275, 87 L.Ed.2d 346 (1985). The District Court's decision in this action is very similar to the district court's decision in Sedima, in both cases the district courts elected to pursue a line of reasoning which limited compensable damages under RICO. The district court in Sedima ruled that the only damages recoverable under RICO were racketeering type damages. This Court overruled that decision noting that the RICO statutes are to be liberally construed to effect their redeemial purposes. This Court noted that

the compensable injury are damages caused by the predicated acts, and further stated that, "[A]ny recoverable damages occurring by reason of a violation of 1962(c) will flow from the commission of the predicate acts." At 359. Similarly, the District Court's decision in this action, both in finding that damages in the form of money paid to an attorney to be incidental damages and not proprietary and ruling that only proprietary damages are compensatory under RICO is in conflict with this Court's decision in Sedima. The District Court's presumption that money is not property within the meaning of Title 18 U.S.C. 1964(c), is unsupported by any decision of this Court or any appellate decision and contrary to this Court's decision in Sedima.

The number of incidents where a

monetarily loss could be asserted to be incidental to the racketeering activity is too numerous to mention in detail; but a few examples would demonstrate that the District Court's decision is flawed: In a RICO claim where arson is the alleged racketeering activity, the insurance proceeds may ultimately flow to the bank or the mortgage holder; the insurance company would still have suffered damages and the money would not have flowed directly to the persons participating in the activity prohibited by RICO. Nevertheless, a RICO claim would lie if there was sufficient other factual information to support it and the only damage sustained by the racketeering was the monetarily loss not the arson. Where a gambling debt or an unlawful loan is being collected by the use of strong arm tactics, threats, coercion, and assaults;

the racketeering activity would be the threats and coercion, as well as, the assaults and the damages would still be monetary. This action concerns a claim no different in kind than the aforementioned. The plaintiff was damaged monetary because of the racketeering activities. Money has always been considered property and the District Court's departure from this historically held position is not in keeping with decisions of this Court or other appellate courts of this Country.

The decision of the District Court is a departure from Sedima and limits the damages which a plaintiff may assert in a RICO action. The issue of incidental versus proprietary damages has not come before this Court or any applicable appellate court where a published decision has addressed this issue. Therefore, this

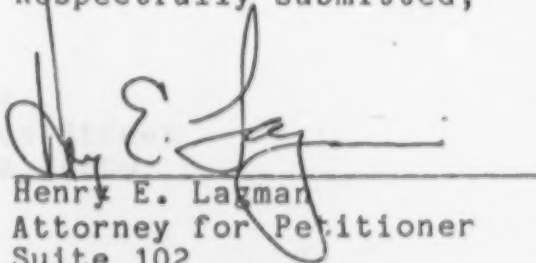
is an issue which is ripe and proper for this Court to hear and determine.

VI

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Henry E. Lagman", is written over a horizontal line.

Henry E. Lagman
Attorney for Petitioner
Suite 102
200 Cahaba Park South
Birmingham, Alabama 35242
Telephone: (205) 995-0220

17 August, 1990

to be issued which is also and subject for
this board to have and determine.

CONCLUSION

It is the conclusion of the board that the
proposed for a bill of material should
be approved.

Approved by the board
this 13th day of
January 1912
at the City of
Washington, D.C.
Secretary of the Board

at length

PROOF OF SERVICE

Henry E. Lagman after being duly sworn, disposes and says that pursuant to Rule 28.4(a) of this Court he served the within PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE ELEVENTH CIRCUIT on counsel for the Respondents by enclosing a copy thereof in an envelope, first class postage prepaid, addressed to:

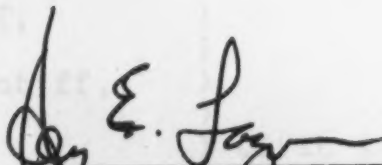
J. Donald Banks
28 North Florida Street
Mobile, Alabama 36609

and

Arthur J. Madden, III
465 Dauphin Street
Mobile, Alabama 36602,

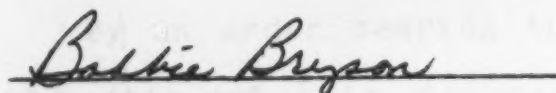
and depositing same in the United States mails at Birmingham, Alabama, on the 17th of August, 1990; and on 6th of September, 1990, I served

Petitioner's corrected Petition on the
aforementioned parties.


Henry E. Lagan, Affiant

Subscribed and Sworn to Before Me this

6th day of September 1990.


Burtie Bryson

Notary Public

my commission expires 8-3-94

Petitioner's requested position on the

aforementioned parties.


J. E. Taylor, Attorney

Subscribed and sworn to before me this

_____ day of _____, 19__.


Notary Public

Very truly yours, J. E. Taylor

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

CHARLES STEWART,)	
)	
Plaintiff,)	
)	
vs.)	CIVIL ACTION NO.
)	86-0607-AH-C
)	
DOROTHY MORRIS, FLOYD)	
ENFINGER, JR.,)	
)	
Defendants.)	

JUDGMENT

By an order bearing the same date as the date of this document, the Court granted defendant Enfinger's motion for summary judgment. Accordingly, it is ORDERED that the plaintiff Charles Stewart take nothing from the defendant Floyd Enfinger with respect to plaintiff's claim in the above styled and numbered action.

DONE this 26th day of May, 1989.

Alex T. Howard

Chief United States
District Judge

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

CHARLES STEWART,)
)
) Plaintiff,)
)
 vs.) CIVIL ACTION NO.
) 86-0607-AH-C
)
 DOROTHY MORRIS, FLOYD)
 ENFINGER, JR.,)
)
 Defendants.)

ORDER

This cause is before the Court on a motion for summary judgment filed by the defendant Floyd Enfinger, Jr., (Doc. #83), and the plaintiff's opposition thereto (Doc. #84). Defendant Enfinger adopted the brief filed by defendant Morris in support of her motion for summary judgment, which the Court granted by order dated March 24, 1989, ruling that plaintiff Stewart did not have standing to bring this RICO cause of action.

Plaintiff's RICO cause of action is premised on his allegations that in order to secure favorable treatment in certain civil actions then pending before former Judge Enfinger, defendant Morris engaged in sexual relations on two occasions with defendant Enfinger. These two sexual encounters are alleged to be the necessary predicate acts required by RICO. There are many disputed factual issues in this action. Most notable is that each defendant denies the existence of the two predicate acts. Defendant Enfinger denies that he ever engaged in sexual relations with defendant Morris, and denies that he ever entered into any agreement or arrangement with her. (Affidavit of Enfinger, 86-0608, Doc. #82) Defendant Morris states that she engaged in sexual relations with Enfinger, but claims that she did so only in order to have her case

set on the Baldwin County trial docket.
(Affidavit of Morris, 86-0607, Doc. #63).

Federal Rule of Civil Procedure 56 provides that summary judgment shall be granted:

if the pleadings, depositions, answer to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

See also Matsushita Elec. Induc. Co. v. Zenith Radio, 106 S.Ct. 1348, 1354 (1986); Celotex Corp. v. Catrett, 106 S.Ct. 2548, 2554 (1986) ("the burden on the moving party may be discharged by "showing" -- that is, by pointing out to the District Court -- that there is an absence of evidence to support the nonmoving party's case."); Anderson v. Liberty Lobby, Inc., 106 S.Ct. 2505, 2510 (1986).

2007, Nov. 16, 44-5602-Sub. 9731

"[S]ummary judgment will not lie if the dispute about a material fact is "genuine," that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson, 106 S.Ct. at 2510. The basic issue before the Court when it weighs a motion for summary judgment is whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Anderson 106 S.Ct. at 2512.

Defendant Enfinger claims that he is entitled to summary judgment on the RICO cause of action as a matter of law, even if all the disputed issues of fact are resolved in favor of the plaintiff. Plaintiff denies that this is so. (86-

"Lately, I have been thinking of the
the dispute about a military base in
"Lately, I have been thinking of the
and that a committee has been formed
acting for the Government, but
between the two sides of the
Lately, I have been thinking of the
about the matter, but I have not
any more evidence to show
the Government is not in a position to
but in another way to be satisfied
the Government is not in a position to
and I have been thinking of the

the Government is not in a position to
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the Government is not in a position to
the Government is not in a position to
the Government is not in a position to

0607, Doc. #63, 86-0607 Doc. #73).

Defendant argues that there are three independent reasons why plaintiff cannot recover, and that each is sufficient to grant defendant's motion for summary judgment. First, defendant claims that plaintiff lacks standing to bring a RICO claim because the injury plaintiff claims to have sustained does not give rise to a RICO cause of action. Second, defendant argues that plaintiff's allegations regarding the RICO predicate acts are insufficient as a matter of law. Third, defendant argues that plaintiff has failed to allege the requisite continuity of the alleged racketeering activity. Because the Court finds that plaintiff lacks standing to bring this action, the Court need not consider defendant's remaining two arguments.

Defendant argues that there are four independent reasons why Plaintiff cannot recover, and that each is sufficient to grant defendant's motion for summary judgment. First, defendant claims that Plaintiff lacks standing to bring a class claim because the injury allegedly suffered by some members does not give rise to a class of injury. Second, defendant argues that Plaintiff's allegations are insufficient to establish that the defendant acted with the intent to discriminate on the basis of race. Third, defendant argues that the evidence is insufficient to establish that the defendant acted with the intent to discriminate on the basis of race. Fourth, defendant argues that the evidence is insufficient to establish that the defendant acted with the intent to discriminate on the basis of race.

Standing.

Private civil RICO actions are provided for under 18 U.S.C. 1964(c) which states that:

Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

Id. In order to state a RICO cause of action, plaintiff must plead and prove (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity. Sedima, S.P.R.I. v. Imrex Co., Inc., 473 U.S. 479, 105 S.Ct. 3285, 3275 87 L.Ed.2d 346 (1985). Furthermore, a RICO plaintiff does not have standing to bring the action unless he has been injured in his business or property. Id.

Plaintiff Stewart claims that he was injured in his business or property in that he incurred expenses totalling \$6,500.00 in defending the legal proceedings instituted by defendant Morris, and that he suffered mental distress. It is settled law that "some aspects of damages normally recoverable for personal injuries, such as mental anguish, fall outside the rubric of "business or property." Grogan v. Platt, 835 F.2d 844, 846 (11th Cir. 1988). Whether attorney's fees incurred by the plaintiff defending the Baldwin County actions constitute injury to property within the meaning of the statute is a closer question. The Court has been unable to locate any binding case directly on point. However, defendant cited a District Court case from the Southern District of Florida which is directly on

Plaintiff Stewart claims that he was
injured in his business or property in
that he incurred expenses totaling
\$5,200.00 in defending the legal
proceedings instituted by defendant
Hortley, and that he suffered mental
distress. It is asserted that these
amounts of damages are not recoverable
for personal injuries, such as mental
anguish. This court is in accord with
"business or property." Green v. Hall,
115 S.W.2d 511, 512 (Tex. Civ. App. 1942).
Whether attorney's fees incurred by the
plaintiff in defending his business or
property constitute injury is a question
of fact. The amount of damages is a
question of fact. The court has been
unable to locate any binding case directly
on point. However, defendant filed a
Motion for Judgment with the District
Court of Texas which is denied.

point, and with which this Court agrees: Local 355 v. Pier 66 Corp., 599 F.Supp. 761 (S.D.Fla. 1984). In Local 355 a labor union brought suit against an employer for damages it sustained when the employer induced its employees to file a decertification petition with the National Labor Relations Board. The Florida Court held that attorneys' fees and costs incurred by the union in defending against the decertification effort were "incidental damages which [did] not arise to the type of proprietary damage for which RICO gives compensation." Id. at 765. Plaintiff argues that Local 355 is "easily distinguishable" because the damages there were incidental and were not caused by the racketeering activity. The Court disagrees, and adopts the reasoning followed by the Florida court. Plaintiff does not have standing to bring this RICO

action and accordingly, defendant Enfinger's motion for summary judgment is due to be, and hereby is, GRANTED. Judgment will be entered accordingly by separate document.

DONE this 26th day of May, 1989.

Alex T. Howard .

Chief United States
District Judge

and accordingly, defendant
Folger's motion for summary judgment is
due to be heard on May 14, 1968.
Judgment will be entered accordingly by
separate document.

Very truly yours,
JAMES EARL RAY, JR.

WILLIAM F. BOWEN
COURT REPORTER
1111 1/2 N. 1ST ST.
MINNEAPOLIS, MINN.

Enclosed for the Court are two copies of a letterhead memorandum dated and captioned as above, which was prepared by the undersigned on May 1, 1968, and which contains a summary of the facts and circumstances of the case, and a recommendation that summary judgment be granted to the defendant.

Very truly yours,
WILLIAM F. BOWEN
COURT REPORTER
1111 1/2 N. 1ST ST.
MINNEAPOLIS, MINN.

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

CHARLES STEWART,)	
)	
Plaintiff,)	
)	
vs.)	CIVIL ACTION NO.
)	86-0607-AH-C-
)	
DOROTHY MORRIS, FLOYD)	
ENFINGER, JR.,)	
)	
Defendants.)	

JUDGMENT

By an order bearing the same date as the date of this document, the Court granted defendant Morris' motion for summary judgment. Accordingly, it is ORDERED that the plaintiff Charles Stewart take nothing from the defendant Dorothy Morris with respect to plaintiff's claim in the above styled and numbered action.

DONE this 24th day of March, 1989.

Alex T. Howard

Chief United States
District Judge

THE UNITED STATES
DEPARTMENT OF AGRICULTURE
WASHINGTON, D. C.

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

CHARLES STEWART,)	
)	
Plaintiff,)	
)	
vs.)	CIVIL ACTION NO.
)	86-0607-AH-C
)	86-0608-AH-C
DOROTHY MORRIS, FLOYD)	
ENFINGER, JR.,)	
)	
Defendants.)	

ORDER

The following motions are pending in
these consolidated cases:

(1) plaintiff's motion for summary judgment filed in 86-0607 (the RICO case) (Doc. #58);

(2) plaintiff's motion to preserve its objections to the defendant's witness and exhibit list, 86-0607 (Doc. #62);

(3) defendant Morris' motion for summary judgment, and response to plaintiff's motion for summary judgment, filed in 86-0607 (the RICO case) (Doc. #63);

(4) plaintiff's response to defendant Morris' motion for summary judgment in 86-0607 (the RICO case) (Doc. #73);

Subject-matter jurisdiction.

(5) defendant Morris' motion to dismiss for lack of subject-matter jurisdiction, filed in the two cases as consolidated (Doc. #74);

(6) defendant Enfinger's motion to dismiss for lack of subject-matter jurisdiction, filed in the two cases as consolidated (Doc. #75);

(7) defendant Enfinger's motion to amend his answer in 86-0607 (Doc. #76);

(8) defendant Enfinger's motion to amend his answer in 86-0608 (Doc. #77);

(9) defendant Morris' additional response to the plaintiff's motion for summary judgment, 86-0607 (Doc. #78);

(10) plaintiff's additional response to the defendants' 12(b) (1) motions, and plaintiff's motion for sanctions under Rule 11, 86-0607 (Doc. #79);

(11) defendant Morris' request for oral argument, 86-0607 (Doc. #80);

(12) plaintiff's motion to preserve its objection to the defendants' witness list and exhibits, filed in 86-0608 (Doc. #83);

(13) defendant Enfinger's opposition to plaintiff's motion for summary judgment, filed in 86-0608, (Doc. #82, 84).

101. [illegible] [illegible] [illegible]
 102. [illegible] [illegible] [illegible]
 103. [illegible] [illegible] [illegible]
 104. [illegible] [illegible] [illegible]
 105. [illegible] [illegible] [illegible]
 106. [illegible] [illegible] [illegible]
 107. [illegible] [illegible] [illegible]
 108. [illegible] [illegible] [illegible]
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 110. [illegible] [illegible] [illegible]
 111. [illegible] [illegible] [illegible]
 112. [illegible] [illegible] [illegible]
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 117. [illegible] [illegible] [illegible]
 118. [illegible] [illegible] [illegible]
 119. [illegible] [illegible] [illegible]
 120. [illegible] [illegible] [illegible]

Subject-matter jurisdiction.

Each defendant moved for dismissal of these consolidated actions for lack of subject-matter jurisdiction, pursuant to Federal Rule of Civil Procedure 12 (b) (1) (Doc. ##74,75). Plaintiff responded to the merits of the motion and in addition moved for the imposition of sanctions under Rule 11 (Doc. #79). The Court will address the issue of subject-matter jurisdiction first.

Defendants contend that plaintiff's claims are barred by the Feldman doctrine, which prohibits federal courts from asserting subject-matter jurisdiction over claims which are inextricably intertwined with state court judgments. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482 n.16, 103 S.Ct. 1303, 1315 n. 16, 75 L.Ed.2d 206 (1982). Defendants argue that since the basis of plaintiff's

Each defendant moved for dismissal of these counterclaims on the basis of subject-matter jurisdiction, pursuant to Federal Rule of Civil Procedure 12 (b) (1). 757 F.2d 1181, 1182 (9th Cir. 1985). In addition to the merits of the motion and its denial, the court also addressed the issue of subject-matter jurisdiction.

Jurisdictional Facts

The defendant's motion for dismissal was denied on the basis of the facts set forth in the complaint. The court found that the complaint stated facts which, if true, would establish subject-matter jurisdiction over the claims. The court also stated that the complaint stated facts which, if true, would establish subject-matter jurisdiction over the claims. The court also stated that the complaint stated facts which, if true, would establish subject-matter jurisdiction over the claims.

claims is that he received unfavorable treatment in the divorce action, this court lacks subject-matter jurisdiction because the RICO and 1983 issues are "inextricably intertwined" with valid state court judgments. Defendants contend that plaintiff was aware of all the alleged improprieties while the state court actions were still pending, and that plaintiff should have raised his federal claims in state court, rather than filing this action.

The Court finds the cases cited by the defendants to be distinguishable in important respects from Stewart's situation. Staley v. Ledbetter, 837 F.2d 1017 (11th Cir. 1986), was an action brought by an adoptive mother to challenge the State of Georgia's child custody determinations. Plaintiff there filed suit under 1983, but requested

claim - in that he received satisfactory
treatment in the divorce action, and this
court lacks subject-matter jurisdiction
because the WFO and 1953 divorce are
"irrevocably interwoven" with valid
state court judgments. Defendants contend
that plaintiff was aware of all the
alleged discrepancies while the state
court action was still pending, and that
plaintiff should have raised the federal
claim in state court rather than filing
this action.

The court finds the claim timely and
admissible as an independent basis for
relief, and grants summary judgment in
plaintiff's favor. State v. Federal, 1953
107 F.2d 811, 1950, was an action
brought by an aggrieved party to the
state of Georgia to annul a divorce
decree. Plaintiff there filed
suit under 1953, but requested

reinstatement of physical custody and psychiatric care at state expense. Although both Hale v. Harney, 786 F.2d 688 (5th Cir. 1986) and Brinkman v. Johnston, 793 F.2d 111 (5th Cir. 1986) dealt with situations in which ex-husbands brought civil rights actions against their ex-wives and the presiding judges, in each of these cases, a large portion of the relief sought was apparently modification of the divorce decrees.¹ Plaintiff here does not seek to set aside the state court judgments, but instead claims monetary damages resulting from defendant's Enfinger's misuse of his position, and defendant Morris' assistance therein.

After careful review of the file and

1 Hale, 786 F.2d at 690. The Brinkman opinion does not expressly state this to be the case, but does stress the similarity between the factual situations in Brinkman and Hale.

relationship of physical security and
psychiatric care - at state expense.
Although both Hale v. Horney, 765 F.2d 588
(5th Cir. 1985) and Brennan v. Tennessee,
797 F.2d 117 (5th Cir. 1986) dealt with
situations in which ex-husbands brought
civil rights actions against their ex-
wives and the presiding judges, in each of
these cases, a large portion of the record
was apparently motivated by the
dispute between the parties. In Horney, it
seems to me that the state court
judgment, but instead of a summary
judgment regarding the husband's
entirety of his position, and
defendant's position, was a summary
judgment regarding the wife and

- Hale, 765 F.2d at 588. The
court's opinion does not
specifically state that the
wife, but does state that
the husband's position was
summary judgment in Brennan and Hale.

the case law, the Court concludes that the Feldman doctrine does not prevent it from asserting subject-matter jurisdiction over the instant action. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482 n.16, 103 S.Ct. 1303, 1315 n. 16, 75 L.Ed.2d 206 (1982); Staley v. Ledbetter, 837 F.2d 1017 (11th Cir. 1986); Hale v. Harney, 786 F.2d 688 (5th Cir. 1986); Brinkman v. Johnston, 793 F.2d 111 (5th Cir. 1986).

Federal Rule of Civil Procedure 11.

Turning now to the plaintiff's motion for Rule 11 sanctions, plaintiff contends that defendants' motion to dismiss for lack of subject-matter jurisdiction was warranted neither under the facts, or any good faith interpretation of the facts, nor under the law, or any good faith

argument for extension of the law. Rule 11 of the Federal Rules of Civil Procedure provides in pertinent part that:

The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. ... If a pleading, motion, or other paper is signed in violation of this Rule, the Court, upon motion, or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

The primary goal of Rule 11 is to

address bad faith filings. The test to be applied is an objective one of reasonableness. Eavenson, Auchmutz, and Greenwald v. Holtzman, 775 F.2d 535, 540 (3rd Cir. 1985) (hereinafter referred to as Eavenson). In Eavenson, the court followed the Advisory Committee's comment, and held:

In exercising its discretion, the district court, "is expected to avoid using the wisdom of hindsight and should test the signer's conduct by inquiring what was reasonable to believe at the time the pleading, motion, or other paper was submitted."

Notes of Advisory Committee on Rules, 1983 Amendment, Fed. R. Civ. P. 11.

In a motion pursuant to Rule 11, F.R.C.P., success or failure on the merits is not determinative. Marco Holding Co. v. Lear Siegler, Inc., 606 F.Supp. 204, 215 (1985) ("It does not follow that Rule 11 Sanctions should be imposed in every instance where a motion is denied . . .).

In the instant action, the defendants' claim that that the Court lacked subject-matter jurisdiction was a well reasoned interpretation of a murky area of federal law, which included a cogent argument for an extension of existing law. That the Court ultimately rejected defendants' argument does not mean that the argument was not grounded in a good faith interpretation of the facts, or was not a good faith argument for an extension of the law. There is absolutely no indication or evidence of unprofessional or unethical conduct on the part of the attorneys for the defendants.

For the reasons set forth above, plaintiff's motion pursuant to Rule Eleven (11) is DENIED.

Plaintiff's Motion for Summary Judgment.

Plaintiff has moved for summary

In the instant action, the defendant
claims that the Court took subject-
matter jurisdiction was a well reasoned
interpretation of a murky area of federal
law, which included a cogent argument for
an extension of existing law. That the
Court ultimately rejected defendant's
argument does not mean that the argument
was not grounded in a good faith
interpretation of the law, or was not a
good faith argument for an extension of
the law. There is absolutely no
indication or evidence of unprofessional
or unethical conduct on the part of the
attorneys for the defendant.

For the reasons set forth above,
Plaintiff's motion pursuant to Rule 11(b)
(ii) is denied.

Plaintiff's Motion for Summary Judgment
Plaintiff has moved for summary

judgment on his RICO claim against the defendants, arguing that there is no genuine issue of material fact and that he is entitled to judgment as a matter of law. (86-0607 Doc. #58, 86-0607 Doc. #63, 86-0607 Doc. #78, 86-0608, Doc. ##82, 84). The Court disagrees. Plaintiff's RICO cause of action is premised on his allegations that in order to secure favorable treatment in the civil actions pending before former Judge Enfinger, defendant Morris engaged in sexual relations on two occasions with defendant Enfinger. These two sexual encounters are alleged to be the necessary predicate acts required by RICO. Plaintiff contends that it has brought "substantial and irrefutable" evidence in support of his case. This is clearly not true, in light of the fact that both defendants vigorously refute plaintiff's version of

the facts. There are many disputed factual issues in this action. Most notable is that each defendant denies the existence of the two predicate acts. Defendant Enfinger denies that he ever engaged in sexual relations with defendant Morris, and denies that he ever entered into any agreement or arrangement with her. (Affidavit of Enfinger, 86-0608, Doc. #82) Defendant Morris states that she engaged in sexual relations with Enfinger, but claims that she did so only in order to have her case set on the Baldwin County trial docket. (Affidavit of Morris, 86-0607, Doc. #63).

Federal Rule of Civil Procedure 56 provides that summary judgment shall be granted:

if the pleadings, depositions, answer to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to

the facts, there are many disputed
factual issues in this action. Most
notable is that each defendant denies the
existence of the two predicate acts.
Defendant Enfinger denies that he ever
engaged in sexual relations with defendant
Morris, and denies that he ever entered
into any agreement or arrangement with
her. Affidavit of Enfinger, 85-0507,
Doc. 485. Defendant Morris also denies
that she engaged in sexual relations with
Enfinger, but wishes that she did so only
in order to have her son out of the
Baldwin County Child Center. Affidavit
of Morris, 85-0507, Doc. 483.
Federal Rule 7 Civil Procedure 22
provides that summary judgment shall be
granted:

It is provided, disposition, answer,
to interrogatories, and admission of
facts together with the affidavit, it
may, then, that there is no genuine
issue as to any material fact and that
the moving party is entitled to

judgment as a matter of law.

See also Matsushita Elec. Induc. Co. v. Zenith Radio, 106 S.Ct. 1348, 1354 (1986); Celotex Corp. v. Catrett, 106 S.Ct. 2548, 2554 (1986) ("the burden on the moving party may be discharged by "showing" -- that is, by pointing out to the District Court -- that there is an absence of evidence to support the nonmoving party's case."); Anderson v. Liberty Lobby, Inc., 106 S.Ct. 2505, 2510 (1986).

"[S]ummary judgment will not lie if the dispute about a material fact is "genuine," that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson, 106 S.Ct. at 2510. The basic issue before the Court when it weighs a motion for summary judgment is whether the evidence presents a sufficient disagreement to require submission to a

Judgment as a matter of law.

See also: Massachusetts Elec. Light Co. v. Eastern Radio, 100 S.Ct. 1348, 1354 (1980); Colony Corp. v. Cigarette, 100 S.Ct. 3225, 3234 (1980) ("The burden on the moving party may be discharged by 'showing' that it is precluded and is the District Court -- that there is an absence of evidence to support the nonmoving party's case."); Anderson v. Liberty Lobby, Inc., 106 S.Ct. 2505, 2510 (1986).

“(2) Summary Judgment will not lie if the dispute about a material fact is ‘genuine,’ that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” Anderson, 106 S.Ct. at 2510. The issue is before the Court when it weighs the evidence for summary judgment is whether the evidence presented is sufficient to require submission to a jury.

jury or whether it is so one-sided that one party must prevail as a matter of law." Anderson 106 S.Ct. at 2512. In the instant case, the Court finds that there are genuine issues of material fact which go to the heart of the alleged cause of action; and accordingly, summary judgment is not proper in this case. Plaintiff's motion for summary judgment is due to be, and hereby is, DENIED.

Defendant Morris' motion for summary judgment.

Defendant Morris claims that she is entitled to summary judgment on the RICO cause of action as a matter of law, even if all of the disputed fact are resolved in favor of the plaintiff. Plaintiff denies that this is so. (86-0607 Doc. #63, 86-0607 Doc. #73). Defendant argues that there are three independent reasons why plaintiff cannot recover, each of

jury or whether it is an one-sided case
one party must prevail as a matter of
law. Anderson 100-5-01, at 2515. In the
instant case, the Court finds that there
are genuine issues of material fact which
go to the heart of the alleged cause of
action, and accordingly, summary judgment
is not proper in this case. Plaintiff's
motion for summary judgment is due to be
and hereby is DENIED.

Defendant's Motion for Summary

Judgment.

Defendant's Motion for summary judgment is
based on summary judgment on the basis
of motion as a matter of law, and
is all of the material facts are resolved
in favor of the plaintiff. Plaintiff
has shown that this is not a one-sided
case. (Exhibit 1-11). Defendant argues
that there are issues of material fact
and plaintiff cannot recover, and the

which is sufficient to grant defendant's motion for summary judgment. First, defendant claims that plaintiff lacks standing to bring a RICO claim because the injury plaintiff claims to have sustained does not give rise to a RICO cause of action. Second, defendant argues that plaintiff's allegations regarding the RICO predicate acts are insufficient as a matter of law. Third, defendant argues that plaintiff has failed to show the requisite continuity of the alleged racketeering activity.

Standing.

Private civil RICO actions are provided for under 18 U.S.C. 1964(c) which states that:

Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

which is sufficient to show defendant's
motion for summary judgment. First,
defendant claims that plaintiff lacks
standing to bring a RICO claim because the
injury plaintiff claims to have sustained
does not give rise to a RICO cause of
action. Second, defendant argues that
plaintiff's allegations regarding the RICO
predicate acts are insufficient and
cannot be proven. Third, defendant argues
that plaintiff has failed to show the
predicate acts are sufficient to establish
defendant's liability.

Standing

Plaintiff claims RICO claims are
provided for under 18 U.S.C. 1961-1967
which state:

Any person injured in his business or
property by reason of a violation of
section 1962 of this chapter may bring
therein in any appropriate United
States district court and shall
recover and double the damages he
sustained and the cost of the suit,
including a reasonable attorney's fee.

Id. In order to state a RICO cause of action, plaintiff must plead and prove (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity. Sedima, S.P.R.I. v. Imrex Co., Inc., 473 U.S. 479, 105 S.Ct. 3285, 3275 87 L.Ed.2d 346 (1985). Furthermore, plaintiff does not have standing to bring the action unless he has been injured in his business or property. Id.

Plaintiff claims that he was injured in his business or property in that he incurred expenses totalling \$,500.00 in defending the legal proceedings instituted by defendant Morris, and that he suffered mental distress. It is settled law that "some aspects of damages normally recoverable for personal injuries, such as mental anguish, fall outside the rubric of "business or property." Grogan v. Platt,

835 F.2d 844, 846 (11th Cir. 1988). Whether attorney's fees incurred by the plaintiff defending the Baldwin County actions constitute injury to property within the meaning of the statute is a closer question. The Court has been unable to locate any binding case directly on point. However, defendant Morris cited a District Court case from the Southern District of Florida which is directly on point, and which this Court finds compelling. Local 355 v. Pier 66 Corp., 599 F.Supp. 761 (S.D.Fla. 1984). In Local 355 a labor union brought suit against an employer for damages it sustained when the employer induced its employees to file a decertification petition with the National Labor Relations Board. The Florida Court held that attorneys fees and costs incurred by the union in defending against the decertification effort were

"incidental damages which [did] not arise to the type of proprietary damage for which RICO gives compensation." Id. at 765. Plaintiff argues that Local 355 is "easily distinguishable" because the damages there were incidental and were not caused by the racketeering activity. The Court disagrees, and adopts the reasoning followed by the Florida court. Plaintiff does not have standing to bring this RICO action and accordingly, defendant Morris' motion for summary judgment is due to be, and hereby is, GRANTED.

Miscellaneous.

Plaintiff's motions to preserve his objections to the defendants' exhibit and witness list, 86-0607 (Doc. #62) and 86-0608 (Doc. #83) are CARRIED TO TRIAL.

Defendant Enfinger's motions to amend his answers, 86-0607 (Doc. #76) and 86-0608 (Doc. #77), are GRANTED.

"included" damages which (did) not arise
to the type of proprietary damages for
which RICO gives compensation." Id. at
352. Plaintiff argues that local 352 is
"essentially distinguishable" because the
damages there were incidental and were not
caused by the racketeering activity. The
Court disagrees, and rejects the reasoning
followed by the Florida court. Plaintiff
does not have standing to bring this RICO
action and accordingly, Defendant's Motion
for summary judgment is due to be
and hereby is, GRANTED.

Miscellaneous.

Plaintiff's Motion to preserve his
objections to the defendant's exhibit and
witness list, 00-0007 (local 352) and 00-
0008 (local 352) are denied in whole.
Defendant's Motion to preserve his
objections to the defendant's exhibit and
witness list, 00-0007 (local 352) and 00-
0008 (local 352), are GRANTED.

Defendant Morris' motion for oral argument, 86-0607 (Doc. #80), is DENIED.

DONE this 24th day of March, 1989.

Alex T. Howard

Chief United States
District Judge

Defendant's Motion for oral
argument, 85-0607 (Post, 12/20/85), is DENIED.

DONE this 24th day of March, 1986.

Alvin T. Howard
Chief United States
District Judge

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

CHARLES STEWART,)
)
Plaintiff,)
)
vs.) CIVIL ACTION NO.
) 86-0607-AH-C
) 86-0608-AH-C
DOROTHY MORRIS, FLOYD)
ENFINGER, JR.,)
)
Defendants.)

ORDER

This cause is before the Court on Plaintiff's motion to certify. Plaintiff originally filed two civil actions arising out of the same set of facts and circumstances, Civil Action Number 86-0607-AH and Civil Action 86-0608-AH. Civil Action NO. 86-0607-AH purported to state a RICO cause of action. During the course of the proceedings the Court consolidated the two actions for all purposes, and subsequently granted summary judgment in favor of the defendants on the

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

CHARLES STEWART

Plaintiff,

CIVIL ACTION NO.

88-0001-AH-C

88-0002-AH-C

ROBERTA MARIE, TRUSTEY

Defendant.

Defendants.

ORDER

This court is before the Court on Plaintiff's motion to dismiss. Plaintiff has previously filed two civil actions relating to the same set of facts and circumstances, Civil Action Number 88-0001-AH and Civil Action 88-0002-AH. Civil Action No. 88-0001-AH purported to state a claim of fraud. During the course of the proceedings, the Court concluded that the allegations were unsubstantiated and subsequently granted summary judgment in favor of the defendant on the

RICO claims, formerly C.A. No. 86-0607-AH. Plaintiff now wishes to appeal that decision, and moves this Court for an order certifying that the grant of summary judgment on his RICO cause of action is a final judgment. Pursuant to Fed. R. Civ. P. 54(b), the Court finds that there is no just reason for delay of the entry of final judgment on the RICO causes of action, originally filed as 86-0607-AH. Accordingly, plaintiff's motion is GRANTED. The judgments dated March 24, 1989 and May 26, 1989 are final judgments. The Clerk is directed to proceed accordingly.

DONE this 12th day of July, 1989.

Alex T. Howard

Chief United States
District Judge

RICO claims, formerly C.A. No. 82-0007-AM.
Plaintiff now wishes to appeal that
decision, and moves this Court for an
order certifying that the case is a summary
judgment on his RICO cause of action is a
final judgment. Pursuant to Fed. R. Civ.
P. 54(d), the Court finds that there is no
just reason for delay of the entry of
final judgment, and the RICO cause of
action, originally filed as 82-0007-AM,
Accordingly, plaintiff's motion is
granted. The judgment entered on May 10,
1982 and May 20, 1982 are final judgments.
The Clerk is directed to so state
accordingly.

Very truly yours,
Chief United States
District Judge

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 89-7612

Non-Argument Calendar

D.C. Docket Nos. 86-0607-AH, 86-0608-AH

CHARLES STEWART,

Plaintiff-Appellant

versus

DOROTHY MORRIS, FLOYD
ENFINGER, JR.,

Defendants-Appellees.

Appeal from the United States District
Court for the
Southern District of Alabama

Before JOHNSON and CLARK, Circuit Judges
and HENDERSON, Senior Circuit Judge.

J U D G M E N T

This cause came to be heard on the transcript of the record from the United States District Court for the Southern District of Alabama, and was taken under submission by the Court upon the record and briefs on file, pursuant to Circuit Rule 34-3;

ON CONSIDERATION WHEREOF, it is now hereby ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby AFFIRMED;

IT IS FURTHER ORDERED THAT plaintiff-appellant pay to defendants-appellees, the costs on appeal to be taxed by the Clerk of this Court.

Entered: May 29, 1990
For the Court:
Miguel J. Cortez, Clerk.
By: David Maland
Deputy Clerk

ISSUED AS MANDATE: JUN 21 1990

EXHIBIT

This case is to be heard on the
evidence of the record from the United
States District Court for the Eastern
District of Alabama, and was heard under
admission in the Court upon the record
and books on file, pursuant to Article
XVI, Sec. 2.

The Constitutionality of the act
which is under consideration is in issue
and the question is whether or not it is
valid and enforceable.

It is the duty of the Court to
ascertain the facts and the law
and to render judgment thereon.

Very truly yours,
J. Edgar Hoover
Director

Approved: J. Edgar Hoover
Special Agent in Charge

APPENDIX E

Title 18 U.S.C. Section 1961 reads as follows:

(1) "racketeering activity" means (A) any act or threat involving murder, kidnaping, gambling, arson, robbery, bribery, extortion, or dealing in narcotic or other dangerous drugs, which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit

transactions), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 relating to the prohibition of illegal gambling businesses), sections 2314 and 2315 (relating to interstate transportation of stolen property), sections 2341-2346 (relating to trafficking in contraband

(transmission), section 1088 (relating to
the transmission of gambling information),
section 1241 (relating to rail travel),
section 1242 (relating to wire travel),
section 1201 (relating to obstruction of
justice), section 1210 (relating to
obstruction of criminal investigations),
section 1211 (relating to the obstruction
of State or local law enforcement),
section 1281 (relating to interference
with society, robbery, or extortion),
section 1282 (relating to kidnapping),
section 1283 (relating to kidnapping),
transportation or harboring persons, section
1284 (relating to unlawful travel),
section 1285 (relating to unlawful travel),
section 1286 (relating to unlawful travel),
the prohibition of illegal gambling
businesses, section 1287 and 1288
(relating to unlawful transportation of
persons), section 1289 (relating to
relating to prohibited in commercial

cigarettes), sections 2421-24 (relating to white slave traffic), (C) any act which is indictable under title 29, United States Code, section 186 [29 USCS 186] (dealing with restrictions on payments and loans to labor organizations) or section 501(c) [29 USCS 501(c)] (relating to embezzlement from union funds), or (D) any offense involving bankruptcy fraud, fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States;

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;

(3) "person" includes any individual or entity capable of holding a legal or beneficial interest in property;

(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter [enacted Oct. 15, 1970] and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

(6) "unlawful debt" means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State or political

(1) "person" included any individual or entity capable of holding a legal or beneficial interest in property;

(2) "association" included any individual, partnership, corporation, association, or other legal entity, and any group or individual associated in such manner with a legal entity as to be treated as a legal entity;

(3) "partner" or "partnering activity" required at least two persons or entities, one of which owned or controlled at least one of the shares, interests, or other rights in the partnership, and the other of which owned or controlled at least one of the shares, interests, or other rights in the partnership;

(4) "partnering activity" required at least two persons or entities, one of which owned or controlled at least one of the shares, interests, or other rights in the partnership, and the other of which owned or controlled at least one of the shares, interests, or other rights in the partnership;

(5) "partnering activity" required at least two persons or entities, one of which owned or controlled at least one of the shares, interests, or other rights in the partnership, and the other of which owned or controlled at least one of the shares, interests, or other rights in the partnership;

(6) "partnering activity" required at least two persons or entities, one of which owned or controlled at least one of the shares, interests, or other rights in the partnership, and the other of which owned or controlled at least one of the shares, interests, or other rights in the partnership;

(7) "partnering activity" required at least two persons or entities, one of which owned or controlled at least one of the shares, interests, or other rights in the partnership, and the other of which owned or controlled at least one of the shares, interests, or other rights in the partnership;

(8) "partnering activity" required at least two persons or entities, one of which owned or controlled at least one of the shares, interests, or other rights in the partnership, and the other of which owned or controlled at least one of the shares, interests, or other rights in the partnership;

(9) "partnering activity" required at least two persons or entities, one of which owned or controlled at least one of the shares, interests, or other rights in the partnership, and the other of which owned or controlled at least one of the shares, interests, or other rights in the partnership;

(10) "partnering activity" required at least two persons or entities, one of which owned or controlled at least one of the shares, interests, or other rights in the partnership, and the other of which owned or controlled at least one of the shares, interests, or other rights in the partnership;

subdivision thereof, or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate;

(7) "racketeering investigator" means any attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect this chapter [18 USCS 1961 et seq.];

(8) "racketeering investigation" means any inquiry conducted by any racketeering investigator for the purpose of

ascertaining whether any person has been involved in any violation of this chapter [18 USCS 1961 et seq.] or of any final order, judgment, or decree of any court of the United States, duly entered in any case or proceeding arising under this chapter [18 USCS 1961 et seq.];

(9) "documentary material" includes any book, paper, document, record, recording, or other material; and

(10) "Attorney General" includes the Attorney General of the United States, the Deputy Attorney General of the United States, any Assistant Attorney General of the United States, or any employee of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this chapter [18 USCS 1961 et seq.]. Any department or

agency so designated may use in investigations authorized by this chapter [18 USCS 1961 et seq.] either the investigative provisions of this chapter [18 USCS 1961 et seq.] or the investigative power of such department or agency otherwise conferred by law.

(Added Oct. 15, 1970, P. L. 91-452, Title IX, 901(a) 84 Stat. 941; Nov. 2, 1978, P. L. 95-575 3(c), 92 Stat. 2465.)

Title 18 U.S.C. Section 1962 reads as follows:

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, Title 18, United States Code [18 USC 2],

to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engages in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class,

and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person

and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(c) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any substantial interest in, or any substantial influence over, the management or business of any issuer of securities of which effect, influence or control is exercised or sought.

(d) It shall be unlawful for any person employed by or associated with the issuer to engage in, or to attempt to engage in, any transaction or course of business which is part of a pattern of racketeering activity or collection of an unlawful debt.

(e) It shall be unlawful for any person to engage in any transaction or course of business which is part of a pattern of racketeering activity or collection of an unlawful debt.

to conspire to violate any of the provisions of subsections (a), (b), or (c) of this section.

(Added Oct. 15, 1970, P. L. 91-452, Title IX, 901(a), 84 Stat. 941.)

Title 18 U.S.C. Section 1964 reads as follows:

(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter [18 USCS 1962] by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in,

to contribute to violate any of the provisions of sections (a), (b), or (c)

of this section.

(Added Dec. 15, 1970, P. L. 91-552, Title

IX, 907(a), 92 Stat. 241.)

Title 18, U.S.C. Section 199, reads as

follows:

(a) The district courts of the United

States shall have jurisdiction to prevent

and restrain violations of section 1952 of

this chapter and to issue orders of arrest

and detention and orders restraining

violations of this chapter, and to

impose fines and imprisonment

and to make such orders as may be

just and proper in the interest of

justice, and to award reasonable costs

of action to the party prevailing in the

action.

the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(b) The Attorney General may institute proceedings under this section. In any action brought by the United States under this section, the court shall proceed as soon as practicable to the hearing and determination thereof. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter [18 USCS 1962] may sue therefor in any appropriate

United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

(d) A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter [18 USCS 1961 et seq.] shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States.

(Added Oct. 15, 1970, P. L. 91-452, title IX, 901(a), 84 Stat. 943.)